



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1995

Ms. Angie Warner  
City Manager  
City of Balch Springs  
3117 Hickory Tree Road  
Balch Springs, Texas 75180

OR95-025

Dear Ms. Warner:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29830.

The City of Balch Springs (the "city") received a request for documents relating to the city's investigation of flooding on Marsha Street. The city submitted to this office for review as responsive to that request one document. The city contends that the document at issue is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4.

You submitted to this office a letter from the city's attorney, who asserts that litigation is reasonably anticipated because a city resident has complained verbally to the city concerning drainage problems and apparently has contacted the city's insurance carrier about damages allegedly caused by the drainage problems. The attorney also states that the resident has sued the city at various times in the past. You have provided no letters or written claims made by the resident concerning the drainage problems.

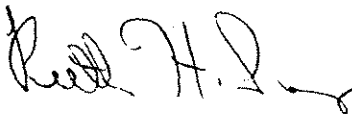
In Open Records Decision No. 551, this office determined that litigation was reasonably anticipated because the open records request was sent by an attorney who sought damages and who threatened to sue the governmental body if payment was not forthcoming. *Id.* at 2. In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted].

In this situation the city has not met its burden of showing that there is more than a "mere chance" of litigation. No written claims or demands for damages to the city or its insurance carrier have been submitted to this office. A resident's verbal complaints and inquiries are not sufficient to show that litigation is reasonably anticipated. The fact that a resident has previously sued the city is not sufficient to show that the requestor intends to sue the city in the future. Therefore, the document at issue must be disclosed.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 29830

Enclosures: Submitted documents

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<sup>1</sup>The document at issue is from the city manager to the city council. The city's attorney states that the document is "work product" that would not be available through the discovery process.

Section 552.103(a) was intended to prevent the use of chapter 552 as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 (1989) at 4. The exception enables a governmental body to protect its position in litigation by requiring that information related to the litigation be obtained, if at all, through discovery. Open Records Decision No. 551(1990) at 3. However, chapter 552 and the discovery process work differently. Chapter 552 does not govern the availability of information that can be obtained through discovery, nor does it create privileges from discovery. Attorney General Opinion JM-1048, at 4-5.

cc: Mr. William L. Long, II  
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(w/o enclosures)

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